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PATEL, NATASHA	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/574,342
Filing Date: March 30, 2006
Appellant(s): JONSEN, ERIC

W. Binton Yorks, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/13/07 appealing from the Office action mailed 10/30/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

NEW GROUND(S) OF REJECTION

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. Art rejections for Claims 14-16 have been withdrawn. However, Claims 14-16 are rejected under 35 U.S.C. 112, second paragraph.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 14-16 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: connecting the interior connector to the electrode.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

WO 03/037176 A2	Solosko et al.	5/2003
5467157	Freeman et al.	10/1995

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4 and 9-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Solosko et al. (WO 03/037176 A2).

5. Regarding Claim 1, Solosko discloses an enclosure (see package 33; Figure 8) for a medical defibrillator electrode (see p. 10, lines 12-14) which seals the electrode against moisture loss (see p. 1, lines 7-9) while the electrode remains in electrical communication with a defibrillator (see p. 4, lines 26-27) comprising:

an enclosure formed of flexible material which is adapted to be sealed against moisture loss (see package 33);

an interior connector (see electrically conductive strip 31; Figure 8) located on the interior of the enclosure and adapted to detachably connect to a defibrillator (see p. 11, lines 25-28); and

an exterior connector (see pad connector 39; Figure 8) located on the outside of the enclosure and adapted to detachably connect to a defibrillator (see p. 13, lines 7-10), the exterior connector being in electrical communication with the interior connector (see Figure 8). The examiner considers that the exterior connector is in electrical communication with the interior connector via conductive meshes 27 and 29).

6. Regarding Claim 2, Solosko discloses a defibrillator electrode having a wireset (see conductive meshes 27 and 29) detachably coupled to the interior connector,

wherein the defibrillator electrode is sealed inside of the enclosure (see Figure 8). The examiner considers that when the conductive strip 31 is torn, the conductive meshes have been detached from what used to be a connector.

7. Regarding Claim 3, see rejection of similarly worded Claims 1 and 2 above. The examiner considers that if the defibrillator is to send/receive electrical signals via connector 39, then connector 39 must be electrically connected to the defibrillator.

8. Regarding Claim 4, Solosko discloses the enclosure has a wall of flexible material (see p. 9, lines 3-4), wherein the interior and exterior connectors are sealed through a hole in the wall of flexible material (see p. 7, lines 1-4 and p. 8, lines 1-3).

9. Regarding Claim 9, see rejection of similarly worded Claim 1 above. Furthermore, Solosko discloses that the medical instrument is adapted to monitor the functioning of the electrode via the signal path (see p. 5, lines 17-30).

10. Regarding Claim 10, Solosko discloses the defibrillator is an external defibrillator (see p. 1, lines 23-25). The examiner considers that since the electrodes are placed on the patient's skin, the defibrillator is on the outside of the body.

11. Regarding Claim 11, Solosko discloses a hermetically sealable pouch for storing the electrode (see p. 9, lines 1-6).

12. Regarding Claim 12, Solosko discloses the interior connector and the exterior connector comprise an electrical connector leads 35 and 37) having the first end disposed in the interior of the enclosure, and a second end disposed on the exterior of the enclosure (see Figure 8).

13. Regarding Claim 13, Solosko discloses the defibrillator instrument further comprises an electrical plug (see end plug 41) adapted to connect to the exterior connector (see Figure 8).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

15. Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Solosko et al. (WO 03/037176 A2) in view of Freeman et al. (US Patent 5,467,157).

16. Regarding Claim 5, Solosko discloses a flange (see liners 11 and 28) having the interior and exterior connectors located on opposite sides thereof (see Figure 1A). Solosko does not disclose that the flange is sealed to a hole in the wall of flexible material. Freeman discloses a similar electrode package with a flange (see gasket 88), wherein the flange is sealed to a hole in the wall of flexible material (see col. 4, lines 31-41). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a flange sealed to a hole in the wall of the flexible material in order to allow leads to pass through while maintaining a sealed environment (see col. 4, lines 36-41).

17. Regarding Claim 6, Solosko does not disclose a heat-sealed flange. Freeman discloses a flange having the interior and exterior connectors located on opposite sides thereof, wherein the flange is heat-sealed to the periphery of a hole in the wall of flexible material (see col. 2, lines 39-43 and col. 4, lines 23-25). It would have been obvious to one of ordinary skill in the art at the time of the invention to heat seal the flange to the side of the wall because Freeman teaches that this is an effective way of sealing off the compartments (see col. 4, lines 23-25).

18. Regarding Claims 7 and 8, Freeman discloses that the flange is formed of a rigid insulative, heat-sealable material (see RTV; col. 4, lines 26-28).

(10) Response to Argument

Regarding Claims 2 and 3, Appellant argues that the electrically conductive strip 31 is not a connector. However, since it does detachably connect to the defibrillator electrodes 27 and 29 (see Figure 8). Furthermore, in the Appellant's specification, an electrical plug is simply provided as an *example* of a connector (see page 3, lines 24-29) and not the *definition* of a connector [emphasis added]. Also, the analogy of the street being a connector is just as valid. Although the Appellant's invention is novel, it is not reflected in the claim language as Solosko's invention reads clearly on it.

The examiner does agree that Solosko's connector is not an adaptor. Therefore, the prior art rejections against Claims 14-16 have been withdrawn.

As for Claims 5-8 and 15-16, Appellant argues that Freeman only teaches an interior connector instead of the claimed interior and exterior connectors. However, Solosko already teaches the exterior and interior connectors. Freeman is used for its teachings on the flange and sealing it to the package. The two references have a common goal of protecting the electrodes from the outside environment.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Natasha N Patel/

Natasha Patel

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